HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No.189/2001
(Old No. 828/1993)

1. Purna Nand S/o Kamlapati,
2. Bhairav Datt, S/o Kishan Chandra.
   Both R/o Village Patti
   Rausi Tahsil
   District- Nainital. .....Revisionist

Versus

State of U.P .....Opp. Party.

Hon'ble J. C. S. Rawat, J.

This criminal revision has been filed against the judgment and order dated 22.5.1993 passed by the learned Special Judge (Additional Sessions Judge) Nainital in Criminal Appeal No. 66/1991 & Criminal Appeal No.70/1991, whereby the co-accused Shiv Datt and Nanda Ballabh were acquitted of the charges under section 323/149 & 147 IPC. One-Girish Chandra was given the benefit of doubt and acquitted of the charges under section 323/149 & 147 I.P.C. However, the conviction of Purna Nand, Bhairav Datt, Bachuli Devi and Hansi Devi under section 147 & 323/149 IPC awarded by the trial court was maintained and the order of releasing Bachuli Devi and Hansi Devi on probation of good conduct for one year sentenced by the trial court was also maintained. The conviction awarded against Purna Nand and Bhairav Datt by the trial court was maintained and the sentences awarded against them were set-aside and they were released on probation of good behavior for a period of three years on the condition that each one of them executed a personal bond of Rs.5,000/- and furnish two sureties in the like amount and receive sentence whenever called upon to do so by the court during the said period of three years and in the meantime to keep peace and to be of a good behaviour

and conduct failing which they will have to undergo sentence awarded by the trial court.

Brief facts of this case are that Devi Datt lodged an FIR against Purna Nand, Bhairav Dat, Shiv Datt, Girish Chandra, SMt. Bachuli Devi and others on 11.10.1999 at police station Haldwani on the allegations that on 11.10.1989 at about 12PM when he went to his filed in village Roshil to clean it, he saw Purna Nand ploughing the said field with bullock and at that time Shiv Datt, Bachuli Devi, Girish Chandra, Nanda Ballabh and Hansi Devi and Bhairav Datt were also present near the said filed. When Devi Datt asked Purna Nand not to plough the field thereupon Bhairav Datt instigated Purna Nand to cause injuries to Devi Datt and then Bhairav Datt made Devi Datt to fall on the ground and then Girish Chandra and Bhairav Datt attacked him with the sticks. At the instigation of Purna Nand, Hansi Devi also attacked Devi Datt with the blunt side of the Daranti and other ladies present at the spot had also caught Devi Datt. Then, the injured Devi Datt went to the Sabhapati of the village, who advised him to get himself medically examined and to lodge a report. Thereafter, Devi Datt went to hospital at Haldwani and got himself medically examined and thereafter lodged a report on the same day. By order dated 19.10.1989, the Patti Patwari made the investigation into the matter as usual which culminated into the submission of chargesheet.

The Assistant Sessions Judge, Nainital before whom the trial took place, framed the charges under sections 147, 148 and 307/149 IPC against the accused persons.

The prosecution in order to prove its case examined Devi Datt Joshi (PW1), Jiwan Chandra (PW2), Kishan Singh (PW-3), Govind Ballabh Gildiyal (PW4), Dr.

N. S. Kaniyal (PW5) and Rajit Singh-Patti Patwari (CW-1).

The learned Additional Sessions Judge, Nainital on his appreciation of the evidence on record as indicated above.

I have heard Smt. Pushpa Joshi learned counsel for the revisionists and Sri Rajeev Mohan learned A.G.A. for the State and perused the record.

The learned counsel for the revisionists has only urged before me that the other co-accused who had been acquitted by the court below have similar role and further contended that there is no evidence against the revisionists. Hence, they cannot be convicted. It was further contended that no specific role has been assigned to the revisionists in the FIR. The learned AGA refuted the contentions. The learned appellate court while acquitting the accused Shiv Datt and Nanda Ballabh has held that neither Devi Datt Joshi (PW1) nor Jiwan Chandra (PW2) has named Shiv Datt and Nanda Ballabh as the persons who also took part in the Marpit or caused any injury to Devi Datt. Devi Datt had deposed that when he went to his filed in village Roshil to clean it, he saw Purna Nand ploughing the said filed with bullocks and at that time Shiv Datt was also present. When the witnesses asked him not to plough the filed, Bhairav Datt instigated Purna Nand to cause injuries to Devi Datt. Thereupon, Bhairav Datt made Devi Datt to fall on the ground and then Girish Chandra and Bhairav Datt attacked him with sticks. On the instigation to Purna Nand, Hansi Devi also attacked Devi Datt with the blunt side of the Daranti. Jiwan Chandra (PW2) reached at the spot immediately and he claimed that he saw Bhairav Datt and Bachuli Devi were causing injuries to the injured- Devi Datt. He had also deposed

that he could not identify the rest of the persons who took part in the incident.

The evidence of both the eye-witnesses reveal that Shiv Datt and Nanda Ballabh did not play the role in the ‘marpit’ and as such they were acquitted. The evidence of Devi Datt clearly reveals that Bhairav Datt rushed towards Devi Datt and fell him on the ground and caused the injury with sticks. On the instigation of Purna Nand, Hansi Devi also attacked Devi Datt with the blunt side of the Daranti and as such Purna Nand also played an active part in the ‘marpit’ and he had a common object to cause the injury to Devi Datt. The learned Sessions Judge has also given the benefit of doubt to Girish Chandra and acquitted of the charges under section 323/149 & 147 IPC. In view of the above, contention of the learned counsel for the revisionists is not maintainable on facts.

It need to be mentioned here that when the conviction against the accused had been concurrently upheld by the trial court and the appellant court and there is concurrent finding with regard to the participation of the revisionists in the ‘marpit’ the revisional court cannot appreciate the finding of fact unless it is perverse. Perusal of the entire records reveals that there is no perversity in the appreciation of evidence and the trial court and the appellant court has correctly appreciated the evidence.

The learned counsel for the revisionists has not urged any other point. In view of this, I do not find any cogent reasons to interfere in the impugned judgment. Therefore, the revision lacks merit and the same is dismissed.

Dated 17.12.2004 **(J.C.S. Rawat, J.)**